

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA</p> <p>2</p> <p>3 MICHAEL W. HILL, et al., : C.A. No. 05-160 Erie Plaintiff : C.A. No. 03-323 Erie 4 : C.A. No. 03-355 Erie v. : C.A. No. 03-368 Erie 5 : C.A. No. 04-011 Erie JOHN J. LAMANNA, et al., : 6 Defendants : 7 8 9 Video Conference Deposition of DEBORA FORSYTH, taken before and by Janis L. Ferguson, Notary Public in and for the Commonwealth of Pennsylvania, on Wednesday, December 6, 2006, commencing at 10 10:08 a.m., at the offices of the United States Attorney, 17 South Park Avenue, Suite A330, Erie, Pennsylvania 16501. 11 12 13 14 15 For the Plaintiffs: Richard A. Lanzillo, Esquire Knox McLaughlin Gornall &amp; Sennett, PC 120 West 10th Street Erie, PA 16501 16 17 For the Defendants: Michael C. Colville, Esquire, AUSA Office of the United States Attorney 700 Grant Street, Suite 4000 Pittsburgh, PA 15219 20 Douglas Goldring, Esquire Federal Prison Industries (UNICOR) 400 First Street NW Washington, DC 20534 21 22 23 24 Reported by Janis L. Ferguson, RPR Ferguson &amp; Holdnack Reporting, Inc. 25</p>	<p style="text-align: right;">Page 3</p> <p>1 DEBORA FORSYTH, first having 2 been duly sworn, testified as follows: 3 4 DIRECT EXAMINATION 5 BY MR. LANZILLO: 6 7 Q. Ms. Forsyth, my name is Rich Lanzillo. I 8 represent Michael Hill, Leslie Kelly, Kevin Siggers, Myron 9 Ward, and Kenny Hill in the matters pending in the United 10 States District Court for the Western District of 11 Pennsylvania. We're conducting your deposition today 12 relative to those cases, and we're doing so by a video 13 hookup, a three-way video hookup. Mr. Colville and Doug are 14 in a remote location. You, I understand, are down in 15 Georgia, and I'm in Erie, Pennsylvania. 16 So a couple of things to keep in mind before we 17 get started. There's a little bit of a delay between the 18 time that I finish speaking and the time you'll hear me, and 19 I think that delay goes all the way around to Mr. Goldring's 20 hookup, Mr. Colville's hookup as well. So you may want to 21 pause for a moment before you start to answer a question to 22 make sure you got the whole question. 23 If at any time during your deposition you do not 24 hear me clearly, just let me know, and I'd be happy to 25 repeat or rephrase my question for you. Also, even if you</p>
<p style="text-align: right;">Page 2</p> <p>1 INDEX 2 3 TESTIMONY OF DEBORA FORSYTH 4 Direct examination by Mr. Lanzillo ..... 3 5 Cross-examination by Mr. Colville ..... 36 6 Redirect examination by Mr. Lanzillo ..... 37 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 do hear me clearly, if you don't understand the question, 2 let me know that, and I'll be happy to rephrase it for you. 3 I'm not here to trick you. I simply want to get some 4 information relative to this -- to these cases. 5 And with those instructions, let me ask you, 6 first, to please state your full name and your professional 7 address. 8 A. Debora Ann Forsyth. I work at FCI Jesup. That's 9 2600 South 301 Street, Jesup, Georgia. 10 Q. And how long have you been in Jesup, Georgia? 11 A. Since June 2003. 12 Q. How are you presently employed? 13 A. I'm full-time. 14 Q. And your position? 15 A. Associate warden of industries and education. 16 Q. When you gave your original response, there was a 17 little crackling or static in the transmission. What, 18 precisely, is the name of the Federal Correctional 19 Institution where you are presently located? 20 A. FCI Jesup. 21 Q. Jesup. 22 A. J-E-S-U-P. 23 Q. Where were you employed prior to FCI Jesup? 24 A. FCI McKean. 25 Q. How long were you employed at FCI McKean?</p>

<p style="text-align: right;">Page 5</p> <p>1 A. From July 1989 to June 2003.</p> <p>2 Q. Why is it that you transferred -- I assume it was</p> <p>3 a transfer from FCI McKean to FCI Jesup. Was it a</p> <p>4 promotion?</p> <p>5 A. Yes, sir.</p> <p>6 Q. What was your title while you were employed at FCI</p> <p>7 McKean?</p> <p>8 A. I left there as the superintendent of industries.</p> <p>9 Q. How long did you occupy that position?</p> <p>10 A. About three and a half years. I believe in</p> <p>11 November of 1999 I got that position.</p> <p>12 Q. What was your position prior to November of 1999?</p> <p>13 A. I was the factory manager at FCI McKean.</p> <p>14 Q. And how long were you factory manager at FCI</p> <p>15 McKean?</p> <p>16 A. I really don't remember. It was probably about</p> <p>17 two years.</p> <p>18 Q. And when you referred to being factory manager, I</p> <p>19 assume we're talking about what is commonly known as the</p> <p>20 UNICOR facility at FCI McKean?</p> <p>21 A. Yes.</p> <p>22 Q. All right. Was there any period of time between</p> <p>23 1989, when you started at FCI McKean, and June of 2003 when</p> <p>24 you were not employed in connection with the UNICOR</p> <p>25 facility?</p>	<p style="text-align: right;">Page 7</p> <p>1 A. I directly supervised the managers, which if we</p> <p>2 include education, I believe were four.</p> <p>3 Q. And, of course, my questions are still focusing on</p> <p>4 when you were acting as superintendent of industries. Can</p> <p>5 you tell me, do you recall the names of the supervisors who</p> <p>6 you -- or the managers who you supervised as the</p> <p>7 superintendent?</p> <p>8 A. Yes. Marty Sapko. He was the factory manager.</p> <p>9 Tim Houlihan was the business manager. Michael Hayes. He</p> <p>10 was the quality assurance manager. Beth Fantasky, who was</p> <p>11 the supervisor of education.</p> <p>12 Q. Ms. Forsyth, briefly, what is your educational</p> <p>13 background?</p> <p>14 A. High school education.</p> <p>15 Q. When did you graduate from high school?</p> <p>16 A. 1974.</p> <p>17 Q. Have you had any formal education or training</p> <p>18 after high school graduation?</p> <p>19 A. With the Bureau of Prisons; the training that I</p> <p>20 received on the job and then training that they give for</p> <p>21 various programs.</p> <p>22 Q. That training, was it all provided in-house, for</p> <p>23 lack of a better term?</p> <p>24 A. It was through the Bureau of Prisons, yes, sir.</p> <p>25 Q. In other words, the Bureau of Prisons did not send</p>
<p style="text-align: right;">Page 6</p> <p>1 A. Yes, sir. It was about a year or a year and two</p> <p>2 months, I was employed as a contract specialist in the</p> <p>3 institution business office.</p> <p>4 Q. Was that early in your tenure at FCI McKean, or</p> <p>5 was that middle, late?</p> <p>6 A. It was fairly early. Like '91, '92.</p> <p>7 Q. Okay. And what were your job responsibilities</p> <p>8 while you occupied the position of superintendent of</p> <p>9 industries at FCI McKean?</p> <p>10 A. I was responsible for the supervision of the total</p> <p>11 operation of the factory.</p> <p>12 Q. Who was your --</p> <p>13 A. In addition to --</p> <p>14 Q. Go ahead. I apologize.</p> <p>15 A. In addition, I was responsible to advise the</p> <p>16 warden of day-to-day activities. And he is who I answered</p> <p>17 to.</p> <p>18 Q. Okay. That was my next question. Was the warden</p> <p>19 your immediate supervisor?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And that's Warden Lamanna?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Did you yourself supervise employees?</p> <p>24 A. Yes.</p> <p>25 Q. Approximately how many?</p>	<p style="text-align: right;">Page 8</p> <p>1 you to a program or seminar outside of the prison system</p> <p>2 itself. Is that correct?</p> <p>3 A. Best that I can recollect, yeah, that's correct.</p> <p>4 Q. And did they bring in anyone from outside the</p> <p>5 prison system to train you, or was it done by existing staff</p> <p>6 members?</p> <p>7 A. They had brought in various times people from the</p> <p>8 outside to teach leadership training; teamwork approach.</p> <p>9 That's all I received, I believe, from the outside. The</p> <p>10 rest was from the BOP.</p> <p>11 Q. So am I correct, then, you were not provided with</p> <p>12 any outside training in areas of occupational health or</p> <p>13 safety?</p> <p>14 A. Not specifically, no.</p> <p>15 Q. Did you receive any such training generally?</p> <p>16 A. During annual refresher training, the safety</p> <p>17 department would give various training, but those were</p> <p>18 in-house, not outside.</p> <p>19 Q. Okay. Did you have a written job description as</p> <p>20 the superintendent of industries at UNICOR?</p> <p>21 A. Yes.</p> <p>22 Q. Did that remain the same throughout the time that</p> <p>23 you had that position, that job description?</p> <p>24 A. To my knowledge, yes.</p> <p>25 Q. While you were employed as superintendent of</p>

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<p style="text-align: right;">Page 9</p> <p>1 industries at UNICOR, did the facility make anything other</p> <p>2 than furniture?</p> <p>3 A. No.</p> <p>4 Q. Do you know whether that facility is still</p> <p>5 operating -- well, let me stop there -- operating generally?</p> <p>6 A. Yes.</p> <p>7 Q. And do you know whether it's still making</p> <p>8 furniture?</p> <p>9 A. It is not making furniture.</p> <p>10 Q. What are they making now? Plastic products?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Do you know why the facility changed from a</p> <p>13 furniture manufacturing facility to a plastic products</p> <p>14 facility?</p> <p>15 A. Purely economics, I'm sure. Things were moved to</p> <p>16 the Coleman plant.</p> <p>17 Q. Where is the Coleman plant?</p> <p>18 A. Leesburg, Florida.</p> <p>19 Q. Was there --</p> <p>20 A. I'm sorry, Lees County.</p> <p>21 Q. Lees County, Florida?</p> <p>22 A. Yes, uh-huh. I believe that's the name of it.</p> <p>23 Q. Was there a furniture manufacturing facility in</p> <p>24 Lees County, Florida at the same time that one was being</p> <p>25 operated at FCI McKean?</p>	<p style="text-align: right;">Page 11</p> <p>1 frame?</p> <p>2 A. Two.</p> <p>3 Q. And at any given time during either shift,</p> <p>4 approximately how many inmates would be engaged in</p> <p>5 activities, employment, at the UNICOR facility?</p> <p>6 A. If memory serves, during the day we were close to</p> <p>7 200. It was probably 160 to 200, depending on the workload.</p> <p>8 At night, we tried to keep it around 100 or less.</p> <p>9 Q. And of those employees, approximately how many</p> <p>10 would be engaged in the cutting or cutting activities</p> <p>11 involving Micore board?</p> <p>12 A. I would be guessing, but very few. But I would be</p> <p>13 guessing, so I'm not sure. I would think less than 10.</p> <p>14 Q. The employees engaged in cutting Micore board,</p> <p>15 would they be in a discreet area of the facility? In other</p> <p>16 words, separate from the other employees?</p> <p>17 A. No.</p> <p>18 Q. So if I'm following correctly, then, this was one</p> <p>19 large shop floor, and one area would be a cutting area? Or</p> <p>20 would they be spread out throughout the facility?</p> <p>21 A. It is one -- one large shop, and cutting areas,</p> <p>22 depending on the machine, could go throughout the area too.</p> <p>23 Q. Okay.</p> <p>24 A. I'm not -- I'm not an expert on where everything</p> <p>25 was laid out, but just from me walking on the floor, there</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Yes. Part of that time.</p> <p>2 Q. Do you know how long there's been a furniture</p> <p>3 manufacturing facility in Lees County, Florida?</p> <p>4 A. No, I -- I don't recall. I remember when they</p> <p>5 opened up the facility down there and they started right</p> <p>6 away doing various furniture products. But as to the exact</p> <p>7 date, I don't know. And it's -- Coleman is the name of the</p> <p>8 facility, and it is Leesburg, Florida where it is. I</p> <p>9 misspoke.</p> <p>10 Q. Okay. When did the UNICOR facility at FCI McKean</p> <p>11 first open?</p> <p>12 A. I don't know. Late '89, early '90.</p> <p>13 Q. Was it in operation when you first arrived at your</p> <p>14 initial position at FCI McKean?</p> <p>15 A. We were setting things up. But, no, it wasn't in</p> <p>16 operation yet.</p> <p>17 Q. Were you involved in the design or layout of any</p> <p>18 aspect of the facility?</p> <p>19 A. No, sir.</p> <p>20 Q. During the period of time that you were</p> <p>21 superintendent of industries, what were the hours of</p> <p>22 operation of the UNICOR facility?</p> <p>23 A. The majority of the time was 7:30 -- or 7:10 until</p> <p>24 11:00 at night.</p> <p>25 Q. And how many shifts were operated during that time</p>	<p style="text-align: right;">Page 12</p> <p>1 were different areas of the factory where things were being</p> <p>2 cut. So not just one area.</p> <p>3 Q. And how often were you actually on the shop floor?</p> <p>4 A. At least daily. Sometimes twice a day.</p> <p>5 Q. And at the times when you would be present on the</p> <p>6 shop floor, approximately how much time would you spend</p> <p>7 there?</p> <p>8 A. Well, it depended on really what I was doing down</p> <p>9 there. But just my daily walks would sometime take about a</p> <p>10 half hour. If we were checking out a new product, I would</p> <p>11 assist with that, and sometimes a bit more. But a normal</p> <p>12 daily walk was a half hour.</p> <p>13 Q. And that walk, would that encompass the entire</p> <p>14 shop floor?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Did you have an office?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And where was that located?</p> <p>19 A. Upstairs, overlooking the factory floor.</p> <p>20 Q. So you could actually observe what was going on</p> <p>21 from your office?</p> <p>22 A. Yes.</p> <p>23 Q. We talked a few moments ago about whether you</p> <p>24 received any outside training at the UNICOR facility or</p> <p>25 whether anyone from the outside was brought in, and you had</p>

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1 addressed those questions. Let me now ask you what, if any,  
2 in-house training was provided to you regarding health and  
3 safety.

4 A. To me, I think it was just the yearly annual  
5 training that we received from the safety department  
6 in-house.

7 Q. Okay. And when you say "annual training", was  
8 there a session once a year?

9 A. Yes. For all staff.

10 Q. And when you say "all staff", what do you mean?

11 A. This particular training that I'm talking about is  
12 for all staff that -- employees that work at FCI McKean.

13 Q. Would that include the regular staff employees  
14 alone, or would it also include the inmate employees?

15 A. Just staff alone.

16 Q. Did that annual training occur at a particular  
17 time during the year?

18 A. Yes.

19 Q. When was that?

20 A. My guess, it's the first part of the year. I  
21 think January, February. I could be mistaken, because  
22 that's when we do it here. I'm not positive.

23 Q. And you mentioned the -- was it the safety office?  
24 Is that the name of the --

25 A. Yes.

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1 Q. Okay. And who, in particular, provided the  
2 training?

3 A. Steve Housler or someone in his staff.

4 Q. And how long was the annual training?

5 A. This particular class, I believe, lasted two  
6 hours.

7 Q. So annually there would be safety training  
8 provided by Steve Housler's office, and it would last  
9 approximately two hours? Is that correct?

10 A. Yes.

11 Q. Other than the two-hour training sessions that  
12 occurred on an annual basis, did you receive any other  
13 training regarding health and safety?

14 A. Not from an outside source and not from BOP.  
15 Other than program statements that I was to be familiar  
16 with.

17 Q. And what are program --

18 A. And that was --

19 Q. What are program statements?

20 A. Those are policy and procedures that are in place  
21 that -- for the factory.

22 Q. Are those maintained in a central location?

23 A. Yes.

24 Q. How often would you receive program statements?

25 A. I'm not sure. Normal program statements last for

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1 a year to two years, and then they are updated.

2 Q. Would the program statements ever be specific  
3 enough to address, for example, use or working with Micore  
4 board?

5 A. No, sir.

6 Q. These are more general guidelines and policies?  
7 Is that correct?

8 A. (Witness nods head.) Yes, sir.

9 Q. Could you tell me your understanding regarding how  
10 the ventilation system worked in the area of the panel saws  
11 and other saws in use at the UNICOR facility during the  
12 period of time that you were superintendent of industries.

13 A. Yes, sir. Each -- each machine had a tube that  
14 come down, and it actually would suck up any of the dust and  
15 debris for the machine so that the factory wasn't polluted  
16 with any of the dust. This would go through the  
17 air-handling system and go to rest outside in big silos.

18 This air-handling system was so strong that on more than a  
19 couple occasions we had screwdrivers and that kind of thing  
20 get sucked up in them. So we had to look for tools then.

21 Q. Were the machines tied into a central air-handling  
22 system?

23 A. Not to my knowledge, but I'm not an expert. I  
24 just knew how they sucked everything outside.

25 Q. And who was responsible for maintaining the

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1 ventilation system and the air-handling system?

2 A. Michael Salerno. He was their maintenance  
3 supervisor.

4 Q. Was he specifically assigned to UNICOR, or was he  
5 an institutional maintenance person?

6 A. No, he was specifically assigned to UNICOR.

7 Q. Are you aware of any instances when the  
8 ventilation system or the air-handling system malfunctioned?

9 A. There -- no, I'm really not. I was trying to  
10 think if there would be anything that would be cause to  
11 malfunction, but, no. I don't recall.

12 Q. Did you ever receive or become aware of any  
13 complaints by any inmates or staff employees regarding  
14 respiratory problems associated with the handling of Micore  
15 board?

16 A. No one made me specifically aware of it. Later I  
17 heard from other staff -- Mr. Sapko, I believe, in  
18 particular, and Mr. Houlihan -- that was telling me that  
19 inmates were complaining. Or that they had filed BP-9's or  
20 something. But that was in the interim of me coming here,  
21 so I'm --

22 Q. During the entire time that you were  
23 superintendent, do I understand your testimony correctly  
24 that during that entire time you were a superintendent, that  
25 no inmate or staff employee brought to you any complaints

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<p style="text-align: right;">Page 17</p> <p>1 regarding respiratory problems associated with the use of 2 Micore board?</p> <p>3 A. No. To the best of my knowledge, no.</p> <p>4 Q. Are you aware of any staff employees submitting 5 disability, Workers' Comp., or any other type of medical 6 disability claim related to respiratory problems?</p> <p>7 A. Disability claims, yes, on staff. I'm not 8 positive if it was respiratory. It might have been. I know 9 he was having issues, but I'm not positive. But I do know 10 one staff had claims. And I was thinking it was Mr. 11 Bevevino.</p> <p>12 Q. What was that individual's name?</p> <p>13 A. Robin Bevevino.</p> <p>14 Q. And Robin Bevevino was a supervisor or a manager? 15 Is that correct?</p> <p>16 A. Yes. He was a foreman on the -- with the inmates.</p> <p>17 Q. Do you think that Mr. Bevevino's problems included 18 respiratory problems?</p> <p>19 A. I know he was -- he was sick quite a bit, yes, 20 with respiratory problems.</p> <p>21 Q. When did you first become aware of Mr. Bevevino's 22 respiratory problems?</p> <p>23 A. I -- I don't remember. I know he was out quite a 24 bit, and there is a -- he was out quite a bit for various 25 things. He had poison ivy that lasted for a long, long</p>	<p style="text-align: right;">Page 19</p> <p>1 A. If not everything there, they -- they had various 2 topics that they were to talk to the inmates about. So a 3 lot of that was self-taught. There were supplies that they 4 were given, videotapes they were to show. They would 5 educate the inmates with materials they had. Each month 6 they would educate them on something different, and I don't 7 know what all those things were.</p> <p>8 Q. Were any Material Safety Data Sheets maintained at 9 the UNICOR facility?</p> <p>10 A. Yes.</p> <p>11 Q. Who was responsible for maintaining the MSDS?</p> <p>12 A. I'm not positive. They -- I believe the safety -- 13 or the maintenance foremen took care of those. They were 14 located a couple different places on the factory floor.</p> <p>15 Q. When you say they were located at a couple of 16 different places on the factory floor, are you indicating 17 that they were moved from time to time or that there were 18 multiple copies?</p> <p>19 A. There were multiple copies.</p> <p>20 Q. You don't know who was responsible for maintaining 21 those for sure?</p> <p>22 A. I can't -- I can't remember. I do believe that -- 23 well, I do know that every chemical that we brought into the 24 institution had to go through the safety department, and 25 Mr. Snyder was the one that was responsible for that. But</p>
<p style="text-align: right;">Page 18</p> <p>1 time. And then he had pneumonia and some colds. And then 2 he had problems with his back. I'm not sure when all of 3 this took place and exactly when I became aware of it. I 4 wasn't his direct supervisor. I believe Mr. English or 5 Mr. Sapko were his direct supervisor.</p> <p>6 Q. Do you know what area of the UNICOR facility he 7 worked in?</p> <p>8 A. He worked on the factory floor. The foremen were 9 rotated almost yearly, so I'm not real sure where 10 Mr. Bevevino was.</p> <p>11 Q. Did the inmate employees receive any training 12 regarding the use of Micore board?</p> <p>13 A. I don't know specifically if -- Micore board, but 14 they received training on safety issues, you know, almost 15 monthly, as far as how to pick boards up and how not to -- 16 (Brief interruption in proceedings.) 17 (Discussion held off the record.)</p> <p>18 Q. All right, let's resume. The training, safety 19 training provided to the inmates, who was responsible for 20 providing that, Ms. Forsyth?</p> <p>21 A. Each of the foremen were responsible for the 22 safety talks.</p> <p>23 Q. And the foremen, am I correct that they would have 24 received their training during the annual training sessions 25 that you described earlier?</p>	<p style="text-align: right;">Page 20</p> <p>1 the maintenance department, I think, had a hand in it, but 2 I'm not positive.</p> <p>3 Q. Where on the shop floor were the Material Safety 4 Data Sheets maintained?</p> <p>5 A. I remember one right as you come in near the 6 factory office, which is on the floor. And then I believe 7 there was one station that was in the back close to the 8 packing area.</p> <p>9 Q. Are you aware of any other locations?</p> <p>10 A. I can't remember.</p> <p>11 Q. Did you ever personally consult the Material 12 Safety Data Sheets?</p> <p>13 A. Yes.</p> <p>14 Q. Who had access to the Material Safety Data Sheets?</p> <p>15 A. Everybody.</p> <p>16 Q. Was there a Material Safety Data Sheet that 17 addressed Micore board or silica dust?</p> <p>18 A. The Micore board, yes. Even particle board. I 19 think everything came with an MSDS on it.</p> <p>20 Q. When did you become aware that there was an MSDS 21 dealing with Micore board?</p> <p>22 A. I don't know. We had ACA inspections where we had 23 to make sure everything was in there. I'm not positive. It 24 could have -- it could have been the first time that OSHA 25 came to the factory.</p>

5 (Pages 17 to 20)



<p style="text-align: right;">Page 21</p> <p>1 Q. And do you recall when the first OSHA visit was?</p> <p>2 A. No, I don't.</p> <p>3 Q. Do you know what prompted that visit?</p> <p>4 A. A letter, I think. I don't know for sure.</p> <p>5 Q. Do you recall the subject of the complaint that</p> <p>6 prompted the OSHA visit?</p> <p>7 A. (No response.)</p> <p>8 Q. Was it Micore board and dust?</p> <p>9 A. It was the air -- it was the air quality, if I</p> <p>10 remember correctly.</p> <p>11 Q. And as part of your receiving notice of the</p> <p>12 complaint to OSHA and the OSHA visit itself, did you at the</p> <p>13 same time become aware that inmates were complaining about</p> <p>14 respiratory problems?</p> <p>15 A. No, I don't know if I think it was inmates or not.</p> <p>16 No. This complaining about the air quality, specific inmate</p> <p>17 ailments, I don't remember. I knew there was an issue,</p> <p>18 which was why we -- they -- OSHA said that there was</p> <p>19 complaints about the air quality, but I really didn't know</p> <p>20 if it was inmate or staff that was making a complaint, and I</p> <p>21 didn't know any specifics.</p> <p>22 Q. I just want to make sure that I'm following your</p> <p>23 testimony correctly here. I mean, when you say you became</p> <p>24 aware that there were air quality complaints, did you not</p> <p>25 also understand that in connection with those air quality</p>	<p style="text-align: right;">Page 23</p> <p>1 they were testing different areas of the factory and</p> <p>2 outside. But I'm not positive whether it was the gentleman</p> <p>3 from OSHA or Mr. Salerno. But the OSHA gentleman was</p> <p>4 present at the time.</p> <p>5 Q. Did you participate in the OSHA inspection and any</p> <p>6 testing in connection with that inspection?</p> <p>7 A. No. No.</p> <p>8 Q. Do you know when they conducted the inspection</p> <p>9 relative to the operation of the facility?</p> <p>10 A. I believe it was -- the test was like an</p> <p>11 eight-hour test, I'm thinking. I know one of the tests that</p> <p>12 we had was an eight-hour test. And I'm thinking that's what</p> <p>13 they did. Beginning from, you know, the 7:30 to 4:00 shift,</p> <p>14 which is when we have most inmates working.</p> <p>15 Q. Let me ask you this: Is it necessary for the</p> <p>16 inmates utilizing table saws and other saws periodically to</p> <p>17 clean up the saw itself; clean up the dust on the machine or</p> <p>18 in or around the machine?</p> <p>19 A. I don't know that.</p> <p>20 Q. Did you ever observe that?</p> <p>21 A. Observe them, no. I observed them using the air</p> <p>22 gun, spraying themselves off for whatever reason, but I</p> <p>23 don't -- that's all I remember seeing.</p> <p>24 Q. When you referred to the air gun, you're talking</p> <p>25 about some sort of pneumatic or compressed air device?</p>
<p style="text-align: right;">Page 22</p> <p>1 complaints, that people were raising concerns about</p> <p>2 respiratory health and ailments?</p> <p>3 A. Yes. That -- that was all part of why they were</p> <p>4 concerned about the air quality. But specific inmates and</p> <p>5 specific people, I didn't have that issue. When -- when</p> <p>6 OSHA made their -- made it known that they were coming in to</p> <p>7 check it, is that they received complaints about the air</p> <p>8 quality, and that's when we started asking questions and</p> <p>9 things. But, specifically, I didn't know specific people,</p> <p>10 that I remember. I don't remember that.</p> <p>11 Q. After the OSHA visit, what did you do regarding</p> <p>12 the air quality issues that were raised?</p> <p>13 A. I don't recall doing anything. There was no issue</p> <p>14 with the air quality concerning the OSHA report. Everything</p> <p>15 was fine. At one point the gentleman that was there said</p> <p>16 that the air quality inside the factory was better than that</p> <p>17 outside the factory. So there was no need for me to really</p> <p>18 react. And at this time is when I was doing my</p> <p>19 house-hunting trip here and then moving here, so I'm not</p> <p>20 sure what happened after that. But I personally don't think</p> <p>21 there was a need to do anything.</p> <p>22 Q. Who made that statement to you, that the air</p> <p>23 quality inside the facility was better than that outside?</p> <p>24 A. I can't remember if it was the OSHA gentleman or</p> <p>25 Mr. Salerno, but they had one of those readers that -- that</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Yes.</p> <p>2 Q. All right. And you observed them, what, using the</p> <p>3 air gun to blow dust off themselves or clothing? Is that</p> <p>4 what you're referring to?</p> <p>5 A. Yes. They were blowing something. I would</p> <p>6 imagine it was dust that was there.</p> <p>7 Q. Okay. Were you able to observe dust being blown</p> <p>8 off of their clothing or themselves?</p> <p>9 A. No. But there were times that there was dust on</p> <p>10 the floor, and they would have to sweep up. And I'm not</p> <p>11 sure where that was or why. But I do remember seeing that.</p> <p>12 But as far as dust coming off themselves, no.</p> <p>13 Q. But you did observe them using the air gun to blow</p> <p>14 what you assumed was dust off of their clothes.</p> <p>15 A. Yes.</p> <p>16 Q. And how often did you see that?</p> <p>17 A. I -- probably once a day. I don't know. When</p> <p>18 they were getting ready to leave or something.</p> <p>19 Q. Okay. So as part of their routine, then, when</p> <p>20 they were leaving, they would be blowing -- blowing dust off</p> <p>21 their clothing; is that right, at the end of the shift?</p> <p>22 MR. COLVILLE: I'll object to the form, but you</p> <p>23 can answer.</p> <p>24 A. Not -- I don't want to imply that everybody did</p> <p>25 that. On occasion I would see an inmate doing that. That</p>

6 (Pages 21 to 24)

Page 25

1 being said, they were told not to do that, because it was  
2 dangerous. So -- but you asked if I had ever seen it, and I  
3 had. Probably once a day one of them were doing it. And it  
4 didn't mean that all of them were.

5 Q. Who told you that was dangerous?

6 A. Mr. Salerno, because of the air pressure.

7 Q. Okay. So the force of the air? Is that what the  
8 danger was?

9 A. I would assume. I know enough to be dangerous  
10 here, so I'm not going to say. I would assume that was it.

11 Q. Okay. That's what you believed. Is that what  
12 you --

13 A. I -- yes. Yes.

14 Q. Do you know whether the inmates ever used the air  
15 gun to blow dust from the saws themselves?

16 A. I never witnessed that.

17 Q. Do you know whether they did that? Did you learn  
18 that through any other --

19 A. Not specifically, no.

20 Q. Did you believe they were doing that?

21 A. The concern that I remember was them using the air  
22 gun on themselves, because it could hurt the eyes or  
23 something. I don't remember any great talk about the air  
24 gun with anything else. So I don't know. I just never  
25 thought about it, I guess.

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1 Q. Were respirators made available to any of the  
2 employees at the UNICOR facility while you were  
3 superintendent?

4 A. To my knowledge, no. Dust masks were available,  
5 but not respirators, to my knowledge.

6 Q. What type of dust mask was provided?

7 A. I don't know. They were just the white masks that  
8 you put over your face.

9 Q. Did you ever see inmates wearing the dust masks?

10 A. Yes.

11 Q. Anyone in particular? And by anyone, I don't  
12 necessarily mean names, but I'm more interested in the  
13 activities they were performing with the dust masks.

14 A. I couldn't -- I couldn't tell you specifically  
15 where. It was rare to see it.

16 Q. To your knowledge, were the inmates ever  
17 instructed to wear dust masks?

18 A. No.

19 Q. Are you aware of any Material Safety Data Sheets  
20 or other safety documents that either required or suggested  
21 the wearing of respirators or dust masks when using any  
22 particular material within UNICOR?

23 A. Possibly if it was in an enclosed area without an  
24 air-handler system. I would think even particle board would  
25 require it. But seeing that we were in a huge room with a

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1 great airing system that I was told was almost double the  
2 capacity that we needed, it wasn't necessary, and OSHA  
3 agreed with that, as best as I can remember.

4 Q. So just so I understand your testimony, then, it's  
5 your testimony that -- and even here sitting here today,  
6 based on what you know today, that it was unnecessary for  
7 inmates to wear respirators or even dust masks when  
8 performing tasks at the UNICOR facility. Is that correct?

9 A. That's my belief, yes. Yes.

10 Q. And do you recall the identity of any person in  
11 particular who told you that?

12 A. I can't recall specifically, but I do remember  
13 reading that. And then I would ask about our air-handling  
14 system and the space, and I think Mr. Salerno and  
15 Mr. Housler is who I talked to at length about that when we  
16 knew OSHA was coming in. But, specifically, that's just my  
17 understanding.

18 Q. Did you ask anyone at OSHA about that  
19 understanding; whether your understanding was correct?

20 A. I asked OSHA about the facility, about the  
21 cleanliness, about potential harm, and they -- their -- even  
22 that day of walking around, he said it was the cleanest  
23 place that he had seen, and there shouldn't be any concern  
24 with anything. Specifically, no. But I just -- it was  
25 concerning the air in the factory itself.

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1 Q. What about, though, that -- what about inmates who  
2 were directly using saws to cut Micore board, and rather  
3 than just breathing the ambient air in the facility, but who  
4 were actually in proximity to the operations point of the  
5 saws? Did you discuss those people with anyone at OSHA?

6 A. I don't think I did, no.

7 Q. Did you have an understanding regarding any  
8 differences in exposure levels that might occur between an  
9 operator of a machine working with Micore board,  
10 particularly a saw, as opposed to someone just breathing the  
11 ambient air -- the air generally in the facility?

12 A. No. I don't have that knowledge. I do -- do know  
13 that when they did the air quality testing, those machines  
14 they would set up would be near the various machines. And  
15 when they tell me things were fine, I -- I was down there  
16 walking, I was by those machines and watching them. I  
17 didn't notice any difference. But I don't have that  
18 specific knowledge, other than things I observed.

19 Q. Other than your daily walk through the facility,  
20 which I understand encompassed the whole facility and lasted  
21 approximately a half an hour, would you spend any  
22 significant periods of time on the shop floor?

23 A. That's where I was the half hour, was on the shop  
24 floor, going throughout each machine, talking to inmates,  
25 seeing the product. On occasion I would be asked by Mr.

7 (Pages 25 to 28)

<p style="text-align: right;">Page 29</p> <p>1 Hayes to come down and look at something he thought maybe</p> <p>2 wasn't quite right, and that would involve me watching them</p> <p>3 cut something and looking at it. So, yes, I was on the shop</p> <p>4 floor quite a bit.</p> <p>5 Q. Did you ever observe employees actually engaged in</p> <p>6 the process of sawing boards, Micore boards specifically?</p> <p>7 A. On the routing machines, yes.</p> <p>8 Q. How many boards would the inmates cut at a time on</p> <p>9 a panel saw, for example?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you have any knowledge regarding anyone</p> <p>12 altering any Material Safety Data Sheets relating to the use</p> <p>13 of Micore board?</p> <p>14 A. No.</p> <p>15 Q. Specifically, are you -- do you have any knowledge</p> <p>16 of anyone striking out the word "respirator" and inserting</p> <p>17 the word "mask" regarding the use of Micore board?</p> <p>18 A. No.</p> <p>19 Q. Have you ever heard that -- from anyone that that</p> <p>20 occurred?</p> <p>21 A. What I recall is in the declaration stating that I</p> <p>22 never altered an MSDS sheet. I have never seen the supposed</p> <p>23 MSDS sheet that was altered. So that, to my knowledge, is</p> <p>24 what I remember then, looking back.</p> <p>25 Q. Did you ever become aware of any complaints from</p>	<p style="text-align: right;">Page 31</p> <p>1 us to investigate it and give a report.</p> <p>2 Q. Other than that testing and any testing performed</p> <p>3 by OSHA, are you aware of any other air tests performed at</p> <p>4 the UNICOR facility?</p> <p>5 A. I believe that safety department had a little</p> <p>6 machine that they could test. I want to say they did. I</p> <p>7 know they do it here, so.</p> <p>8 Q. What --</p> <p>9 A. It's part of that policy.</p> <p>10 Q. The machine, can you -- can you be more specific,</p> <p>11 what you're talking about?</p> <p>12 A. No.</p> <p>13 Q. You have such a device at your current facility?</p> <p>14 A. Pardon me?</p> <p>15 Q. Do you have such a testing device at your current</p> <p>16 facility?</p> <p>17 A. Yes.</p> <p>18 Q. Did you ever see a similar device at FCI McKean?</p> <p>19 A. I can't remember. That's why now I'm hesitating.</p> <p>20 You know, I'm over 50, so I don't know if I'm combining the</p> <p>21 factory in two plants or not. So the air quality in any</p> <p>22 factory is real important, but I'm not -- I guess I should</p> <p>23 just back up on that one, and Mr. Housler can answer that.</p> <p>24 I'm not real sure now.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 30</p> <p>1 either inmate employees or staff employees regarding skin</p> <p>2 irritations or other skin conditions experienced by those</p> <p>3 people while -- or while working in association with Micore</p> <p>4 board?</p> <p>5 A. No.</p> <p>6 Q. Other than the air testing that was undertaken in</p> <p>7 connection with the OSHA inspection, are you aware of any</p> <p>8 other air test performed in the UNICOR facility?</p> <p>9 A. Yes. We had a private company come in and do a</p> <p>10 testing prior to OSHA coming in and doing their testing.</p> <p>11 Q. And when was that?</p> <p>12 A. I -- I don't remember specifically.</p> <p>13 Q. Do you recall the name of the company who</p> <p>14 performed the test?</p> <p>15 A. No.</p> <p>16 Q. Recognizing that you can't recall precisely when</p> <p>17 that occurred, do you recall whether it was soon before the</p> <p>18 OSHA testing?</p> <p>19 A. Not too before. I'm thinking there was quite a</p> <p>20 few months, if not a year before, but I'm guessing. But</p> <p>21 memory -- memory tells me that it was before, so. Long</p> <p>22 before, but I'm not positive.</p> <p>23 Q. And why was that testing performed?</p> <p>24 A. It was in response to a letter from OSHA stating</p> <p>25 that they had received a written complaint, and they asked</p>	<p style="text-align: right;">Page 32</p> <p>1 A. But I just never had any concerns with the air</p> <p>2 quality in that factory. Even when the complaints were</p> <p>3 issued, we had the testing done immediately, and I -- I just</p> <p>4 thought this was the -- the -- you know, I was amazed,</p> <p>5 because I know I never even had problems, and we were there</p> <p>6 a lot on the floor.</p> <p>7 Q. Well, just backing up for a second to the device</p> <p>8 for testing air quality.</p> <p>9 A. Yes.</p> <p>10 Q. If I understand your testimony correctly, what you</p> <p>11 are certain of is that such a device is used at your current</p> <p>12 facility, and you can't recall whether one was available or</p> <p>13 used at FCI McKean? Is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And as far as the response to notice that there</p> <p>16 were at least concerns about air quality, am I correct that</p> <p>17 no testing was undertaken until OSHA notified you that it</p> <p>18 had received a letter from someone raising concerns about</p> <p>19 the air quality? Is that also correct?</p> <p>20 A. I -- I honestly don't know that, and I don't</p> <p>21 remember. I know the private company coming in that we</p> <p>22 paid, that that's the first I remember doing it. But I</p> <p>23 wasn't over at the factory the whole time. So in-house</p> <p>24 testing is where I'm not sure of. But to pay an outside</p> <p>25 person to come in, that's the first time. That I remember.</p>

8 (Pages 29 to 32)



<p style="text-align: right;">Page 33</p> <p>1 Q. If there was any in-house testing, you're not 2 aware of it, though. Is that correct?</p> <p>3 A. I don't remember.</p> <p>4 Q. Okay. Did the employees have production quotas?</p> <p>5 A. No. We -- we just were a job factory. The job 6 was there, it went through the factory, and it had a due 7 date.</p> <p>8 Q. So there was a schedule by which employees were 9 expected to complete certain tasks or products?</p> <p>10 A. Of course.</p> <p>11 Q. Did you review anything in preparation for your 12 deposition today, Ms. Forsyth?</p> <p>13 A. I tried to review the declarations that I had 14 given prior. Because it was in 2004, a lot of them.</p> <p>15 Q. Did you review any production records or 16 photographs or any other records in preparation for your 17 deposition?</p> <p>18 A. No, I don't have access to those.</p> <p>19 Q. Are you familiar with a product known as Loc-Weld?</p> <p>20 A. Is that the glue?</p> <p>21 Q. Do you remember it as some sort of glue or 22 adhesive?</p> <p>23 A. I don't know. I remember a glue, and I -- I think 24 it was like an Elmer's glue. If that's the one. I don't 25 know.</p>	<p style="text-align: right;">Page 35</p> <p>1 A. I don't recall those -- those things.</p> <p>2 Q. Is it your belief that you had already left the 3 facility by the time the OSHA report or citations were 4 issued?</p> <p>5 A. That's what I'm thinking. I know that -- that 6 there was a verbal that had come in while I was still there, 7 but I don't recall seeing a written report.</p> <p>8 Q. Did you maintain any notes, personal notes or 9 professional notes regarding your involvement with the OSHA 10 inspection?</p> <p>11 A. No.</p> <p>12 Q. Do you recall taking any actions after you spoke 13 with the OSHA representatives, but before they issued their 14 report, findings, or citations?</p> <p>15 A. Specifically, I don't recall.</p> <p>16 Q. Was it your practice to maintain any type of 17 journal or personal notes regarding your activities at 18 UNICOR?</p> <p>19 A. No.</p> <p>20 MR. LANZILLO: Give me one minute, please. 21 (Brief pause.)</p> <p>22 MR. LANZILLO: Ms. Forsyth, thank you very much. 23 Those are all the questions that I have.</p> <p>24 THE WITNESS: Thank you.</p> <p>25 MR. COLVILLE: I have just a couple questions.</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. But as far as a glue or adhesive known as -- 2 specifically as Loc-Weld, have you heard that term before?</p> <p>3 A. I've heard that term. Prior to being the factory 4 manager, I was the business manager, so I helped pay bills. 5 Loc-Weld was a term that I heard, and I'm not sure -- I 6 think it's a glue. That's all I can tell you.</p> <p>7 Q. Okay. Do you recall whether -- well, let me back 8 up. You've told us that your recollection of OSHA's 9 comments about air quality was that the quality of the air 10 was quite good. Do you recall whether OSHA raised concerns 11 about any other conditions in the factory or even issued 12 citations?</p> <p>13 A. Yes. They did. Which is sort of normal, I think, 14 for OSHA when they come in. And I can't remember what they 15 were. I remember once that a fire hydrant wasn't accessible 16 and that kind of thing. But that's all I remember about 17 those.</p> <p>18 Q. After you received OSHA's report or citations, did 19 you do anything in response to it?</p> <p>20 A. The -- I can't recall if I saw the actual written 21 report, because I wasn't there. If I did see it, I would 22 have done everything that they had requested, because then I 23 have to respond to the warden as to what we have done to 24 correct things.</p> <p>25 Q. It --</p>	<p style="text-align: right;">Page 36</p> <p>1</p> <p>2 CROSS-EXAMINATION</p> <p>3 BY MR. COLVILLE:</p> <p>4</p> <p>5 Q. With regard to the MSDS sheets, you were 6 questioned about them being altered. Just a straightforward 7 question. Did you alter the MSDS sheets?</p> <p>8 A. No, sir.</p> <p>9 Q. You also mentioned that when the OSHA inspection 10 did occur, that -- I thought you said that they -- they 11 inspected or reviewed the MSDS sheets that were located -- I 12 think at least in two spots on the factory floor. Is that 13 an accurate statement?</p> <p>14 A. To my knowledge. I can see in my mind where one 15 specifically is, and I'm pretty sure there is one in the 16 back, but I'm not positive. I'm almost positive.</p> <p>17 Q. My question is a little more pointed than that. 18 Did OSHA ever go to the MSDS sheets, wherever they were 19 located, and inspect them?</p> <p>20 A. I recall the man standing at the one in the front 21 looking through it, yes.</p> <p>22 Q. Do you know whether or not when they were looking 23 through it, if they were looking at the MSDS sheet for 24 Micore board or Loc-Weld?</p> <p>25 A. No, I don't know that.</p>

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1 Q. Okay. Subsequent to OSHA looking at those MSDS  
2 sheets, did they come to you at any time and report any  
3 concern with what they found to be tampering or alteration  
4 of MSDS sheets that they did look at, whether they were for  
5 Micore board or any other?

6 MR. LANZILLO: Objection to form.

7 A. No. Not that I recall.

8 Q. Do you know whether or not FCI McKean was issued a  
9 citation for having altered MSDS sheets as part of the OSHA  
10 investigation?

11 A. Not that I'm aware of.

12 Q. When you walked the factory floor on a daily  
13 basis, did you wear a respirator?

14 A. No, sir.

15 Q. Did any staff members wear a respirator while they  
16 were on the floor?

17 A. Not to my knowledge.

18 MR. COLVILLE: That's all I have. Thank you.

19 MR. LANZILLO: Yeah, just a couple quick  
20 follow-ups.

21  
22 REDIRECT EXAMINATION

23 BY MR. LANZILLO:

24

25 Q. Miss Forsyth, you don't know whether OSHA actually

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1 inspected the MSDS sheets for the Loc-Weld or the Micore  
2 board, do you?

3 A. I don't know that, no.

4 Q. Okay.

5 A. I can't recall.

6 Q. And how often did you actually operate a panel saw  
7 or a router with Micore board on the facility floor?

8 MR. COLVILLE: Object to form.

9 A. Me specifically?

10 Q. Did you ever operate one of those machines with  
11 Micore board, ma'am?

12 A. I did not.

13 Q. And how often would the supervisors or managers on  
14 the floor actually be the operators of the equipment?

15 A. I don't know that.

16 Q. That would certainly not be a regular activity  
17 undertaken by a manager, would it?

18 A. No. These were supervisors, so.

19 MR. LANZILLO: That's all I have. Thank you very  
20 much.

21 MR. COLVILLE: That's all. We'll waive. Thank  
22 you.

23

24 (Deposition concluded at 11:16 a.m.)

25

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